Feb 23 1872
motion to dismiss

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 529.

THOMAS ROOP, JAMES SHEHAN, AND HENRY S. WILSON, COMMISSIONERS OF MIFFLIN COUNTY,

vs.

THE COMMONWEALTH OF PENNSYLVANIA, EX REL. THE ATTORNEY GENERAL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED DECEMBER, 12, 1871.

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1 The answers of the justices of the supreme court of the State of Pennsylvania, to the writ of error from the Supreme Court of the United States hereunto annexed as follows, to wit:

2 In the supreme court of Pennsylvania, sitting in and for the middle district thereof, at the city of Harrisburg, Penn'a, on the first Monday of May, A. D. 1871—present, the Honorable James Thompson, chief justice; and John M. Read, and George Sharswood, justices; and Robert Snodgrass, prothonotary of the said supreme court.

Among the records and proceedings of the said the supreme court of Pennsylvania in and for the middle district thereof to No. 99 of the May , 1871, it is contained as follows, to wit:

Docket entries.

THE COMMONWEALTH OF PENNSYLVANIA, EX relatione the attorney general, and now ex relatione Loren L. Ellsworth, *vs.* THOMAS ROOP, JAMES SHEHAN, AND HENRY S. Wilson, commissioners of the county of Mifflin.	Suggestion for an alternative mandamus.

1871. May 2. Petition and suggestion for writ filed, and, on motion of the attorney general, writ of alternative mandamus allowed, returnable May 15, 1871. Same day exit writ.

1871. May 15. T. M. Uttley, esq., appears for defendants, (see paper filed. Same day writ of alternative mandamus returned "served." So answers M. Jones, sheriff. (See endorsement on writ.)

1871. May 16. Answer of Thomas Rupp filed. Same day, on motion of defendants' attorneys, the time for filing answer of James
3 Shehan, and Henry S. Wilson extended to May 24th next.

1871. May 24th. Answer of James Shehan and Henry S. Wilson filed. Same day motion to quash the writ, and reasons filed. Same day, demurrer of the attorney general filed, and ordered that the motion to quash and the demurrer be argued on 25th instant.

1871. May 26. Motion to quash, and demurrer argued. Same day, petition of Loren L. Ellsworth to be substituted as relator instead of the attorney general filed and granted.

And now, to wit, May 26, 1871, motion to quash refused; judgment for the Commonwealth on the demurrer, and a peremptory mandamus ordered and granted.

JOHN M. READ.

1871. May 29. Exit peremptory mandamus.

And now, to wit, June 6, 1871, writ of error from the Supreme Court of the United States, citation to defendant in error, and writ of error bond in $500 , approved by Hon. John M. Read, acting chief justice of the supreme court of Pennsylvania, received and filed. Same day, copy of writ of error for defendant in error received.

Service of citation accepted by Geo. W. Elder, esq., of counsel for defendant in error, June 5, 1871. (See endorsement on citation,) and affidavit of service on attorney general filed June 6, 1871.

1871. Octo. 19. Peremptory mandamus returned "served." So answers M. Jones, sheriff. (See endorsement on writ.)

Certified from the record.

Harrisbug, Pa., Nov. 25, 1871.

[SEAL.] ROB'T SNODGRASS,
Prothonotary of Sup. C't of Pa. Middle District.

4 In the supreme court of Pennsylvania, middle district, May term, 1871.

THE COMMONWEALTH OF PENNSYLVANIA, EX rel. the attorney general, *vs.* THOMAS ROOP, JAMES SHEHAN, AND HENRY S. Wilson, commissioners of the county of Mifflin.	Information & suggestion.

Alternative mandamus.

And now, May 2, 1871, F. Carroll Brewster, the attorney general, comes into the supreme court of the State of Pennsylvania, and gives the said court to be informed as follows:

1. On the 8th day of February, 1871, there was approved a certain act of assembly, entitled "An act to authorize the commissioners of Mifflin County to cause a public bridge to be erected over the Juniata River, at the borough of Newton Hamilton, and to buy the Mattawana toll-bridge over the Juniata River, at M'Veytown, in said county."

2. That by the first section of said act it was, inter alia, provided that the commissioners of Mifflin County be, and are hereby, authorized and required to cause a good and sufficient public bridge to be erected, at the expense of said county, over the Juniata River, from a point in the borough of Newton Hamilton, at the foot of the canal bridge, to the land of Mrs. Wharton, in Wayne Township, in said county, and that the said commissioners are hereby directed to provide the means, and cause such bridge to be erected as speedily as possible, so that the same shall be completed on or before the first day of November next.

3. That Thomas Roop, James Shehan, and Henry S. Wilson, the defendants, were, at the passage of said act of assembly, and still are, the commissioners of the county of Mifflin.

4. That, on the 9th of March, 1871, certain citizens of Mifflin County presented to said commissioners a certified copy of said act of assembly, and requested them to proceed to build said bridge.

5. That said commissioners, at that time, took no decided action in the matter, but held the same over for future consideration.

6. That subsequently, to wit, on the 5th day of April, 1871, said commissioners met at their office, in Lewistown, and adopted the following preamble and resolution in relation to said act of assembly and the building of said bridge, viz:

Whereas certain citizens of Wayne Township and Newton Hamilton have this day applied to us to erect a bridge at Newton Hamilton, under the provisions of an act of assembly of 8th February, 1871, we, the commissioners, do

Resolve, That we do not recognize the binding obligation of said act of assembly, and do hereby refuse to proceed to erect said bridge.

7. That said commissioners have refused, and do still refuse, to regard

the provisions of said act of assembly and erect said bridge at Newton Hamilton.

Wherefore, the said attorney general, on behalf of the said Commonwealth, prays the court for an alternative mandamus, commanding the said commissioners to erect said bridge, as required by said act of assembly, or show cause why they should not, &c.

F. CARROLL BREWSTER,
Attorney General.

5 Endorsement:) No. 99, May term, 1871. Commonwealth ex rel. attorney general, vs. Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of Mifflin County. Suggestion. May 2, 1871. Writ allowed, ret. May 15, 1871. Filed May 2, 1871.

An act to authorize the commissioners of Mifflin County to cause a public bridge to be erected over the Juniata River, at the borough of Newton Hamilton, and to buy the Mattawana toll-bridge over the Juniata River, at M'Veytown, in said county.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That the commissioners of Mifflin County be, and they are hereby, authorized and required to cause a good and sufficient public bridge to be erected, at the expense of said county, over the Juniata River, from a point in the borough of Newton Hamilton, at the foot of the canal bridge, to the land of Mrs. Wharton, in Wayne Township, in said county, and that the said commissioners are hereby directed to provide the means, and cause such bridge to be erected as speedily as possible, so that the same shall be completed on or before the first day of November next.

SECTION 2. That the said commissioners of Mifflin County are also hereby authorized and required to purchase of the Mattawana Bridge Company their bridge or bridges across the Juniata River, at M'Veytown, in said county, at a valuation to be placed thereon by three disinterested appraisers, to be appointed by the court of quarter sessions of said county, upon the application of any citizen thereof, at the next session of said court; and the said appraisers, or a majority thereof, shall make report to the next court thereafter; and upon their report being presented to and filed in the said court, the commissioners of said county shall draw their warrant upon the county treasurer of Mifflin, in favor of the treasurer of the Mattawana Bridge Company, or the president there-
6 of, for the amount of said appraisement; and upon delivery and payment of the said warrant, the said bridge or bridges shall be vested in the county of Mifflin, and be free to the use of the public forever: *Provided*, That the appraisers to be appointed under the authority of this act shall not be residents of the county of Mifflin: *And provided further*, That the said commissioners shall not have authority to buy said bridge or bridges if the valuation of the said appraisers shall exceed eight thousand dollars.

SECTION 3. That in case the Mattawana Bridge Company shall refuse to sell to the county of Mifflin the bridge or bridges aforesaid, at the price and sum so fixed in the appraisement aforesaid, that then the commissioners of the said county are hereby authorized and required to cause a good and sufficient public bridge to be erected at the expense of the said county, over the Juniata River, at the borough of M'Veytown aforesaid, on a suitable site, to be selected by the said commissioners, or

a majority thereof, who are hereby directed to provide the means and cause such bridge to be erected as speedily as possible.

SECTION 4. That the commissioners of the county of Mifflin, for the purpose of carrying into effect the objects of this act, are hereby authorized, if necessary, to borrow any sum of money not exceeding twenty-five thousand dollars, at a rate of interest not exceeding eight per cent., and to issue bonds therefor, in sums of not less than five hundred dollars.

JAMES H. WEBB,
Speaker of the House of Representatives.
WILLIAM A. WALLACE,
Speaker of the Senate.

Approved the eighth day of February, anno Domini one thousand eight hundred and seventy-one.

JNO. W. GEARY.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
Harrisburg, February 9, *A. D.* 1871.

PENNSYLVANIA, *ss:*

I do hereby certify that the foregoing and annexed is a full, true, and correct copy of the original act of the general assembly, entitled "An act to authorize the commissioners of Mifflin County to cause a public bridge to be erected over the Juniata River, at the borough of Newton Hamilton, and to buy the Mattawana toll-bridge over the Juniata River, at M'Veytown, in said county," as the same remains on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the secretary's office to be affixed the day and year above written.

J. M. WEAKLEY,
Deputy Secretary of the Commonwealth.

7 *Writ of alternative mandamus.*

MIDDLE DISTRICT OF PENNSYLVANIA, *ss:*

The Commonwealth of Pennsylvania to Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of the county of Mifflin, greeting:

Whereas it has been lately shown to us before our justices of the supreme court of Pennsylvania, sitting in and for the middle district, at Harrisburg, on the part and behalf of the Commonwealth of Pennsylvania, ex relatione the attorney general, that, on the 8th day of February, 1871, there was approved a certain act of assembly, entitled "An act to authorize the commissioners of Mifflin County to cause a public bridge to be erected over the Juniata River, at the borough of Newton Hamilton, and to buy the Mattawana toll-bridge, over the Juniata River at M'Veytown, in said county;" that, by the first section of said act it was, inter alia, provided that the commissioners of Mifflin County be, and are hereby, authorized and required to cause a good and sufficient public bridge to be erected at the expense of the said county, over the Juniata River, from a point in the borough of Newton Hamilton, at the foot of the canal bridge, to the land of Mrs. Wharton, in Wayne Township, in said county, and that the said commissioners are hereby directed to provide the means, and cause such bridge to be erected as speedily as possible, so that the same shall be completed on or before the first day of Novem-

ber next; that the said Thomas Roop, James Shehan, and Henry S. Wilson, were, at the passage of the said act of assembly, and still are, the commissioners of the county of Mifflin; that, on the 9th day of March, 1871, certain citizens of Mifflin County presented to said commissioners a certified copy of the said act of assembly, and requested them to proceed to build said bridge; that said commissioners, at that time, took no decided action in the matter, but held the same over for future consideration; that, subsequently, to wit, on the fifth day of April, 1871, said commissioners met at their office, in Lewistown, and adopted the following preamble and resolution in relation to said act of assembly and the building of said bridge, viz: "Whereas certain citizens of Wayne Township and Newton Hamilton have this day applied to us to erect a bridge at Newton Hamilton, under the provisions of act of assembly of 8th February, 1871, we, the commissioners, do *Resolve*, That we do not recognize the binding obligation of said act of assembly, and do hereby refuse to proceed to erect said bridge;" and that the said commissioners have refused, and do still refuse, to regard the provisions of said act of assembly and erect said bridge at Newton Hamilton: We, therefore, being willing that due and speedy justice should be done in this behalf, do command you, the said Thomas Roop, James Shehan, and Henry S. Wilson, commissioners aforesaid, firmly enjoining that forthwith you proceed to cause to be erected and built the said bridge at Newton Hamilton, as by the said act of assembly so as aforesaid made and provided, you are required to do; and that all and singular the matters for the speedy performance of the foregoing, according to the exigency of the law, you shall do and execute immediately, or in default thereof, that you make known to us in our said supreme court of Pennsylvania, before the justices thereof, sitting in and for the middle district thereof, at Harrisburg, on the fifteenth day of May instant, (1871,) why you have not done the same.

SEAL OF SUPREME COURT OF PA., MIDDLE DISTRICT.

Witness the Hon. James Thompson, chief justice of our said supreme court, at Harrisburg, the second day of May, in the year of our Lord one thousand eight hundred and seventy-one, and of the Commonwealth the ninety-fifth.

ROB'T SNODGRASS,
Prothonotary.

8 Endorsed as follows:

RETURNS.—Served the within writ on Thomas Roop, by leaving a true copy with his wife, at his residence, and making known the contents to her, May 5, 1871; on James Sheehan, personally, by making known the contents to him, and handing to him a true and attested copy, May 5, 1871; on Henry S. Wilson, personally, by making known contents to him, and handing him a true and attested copy, May 6, 1871.

So answers M. JONES, *Sheriff.*

Sheriff's fees, $9 20.

I accept service for Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of Mifflin County, reserving all legal exceptions. May 3, 1871.

T. M. UTTLEY,
Attorney for Commissioners of Mifflin County.

No. 99, May term, 1871. Commonwealth of Pennsylvania, ex rel. the

attorney general, vs. Thomas Roop, James Shehan, & Henry S. Wilson, commr's of Mifflin Co'y. Alternative mandamus. Returnable May 15, 1871.

9 In the supreme court of Pennsylvania, middle district, May term, 1871. No. 99.

THE COMMONWEALTH OF PENNSYLVANIA, EX rel. the attorney general, *vs.* THOMAS ROOP, JAMES SHEHAN, & HENRY S. Wilson, commissioners of Mifflin County. } Alternative mandamus.

I appear for defendants in above suit.
May 15, 1871.

J. M. UTTLEY,
Att'y for Commissioners of Mifflin Co.

10 *Return of defendant Roop.*

In the supreme court of Pennsylvania. No. 99, May term, 1871.

COMMONWEALTH OF PENNSYLVANIA, EX RELATIONE the attorney general, *vs.* THOMAS ROOP, JAMES SHEHAN, AND HENRY S. Wilson, commissioners of Mifflin County. } Alternative mandadamus, returnable May 15, 1871.

To the honorable the judges of the supreme court of Pennsylvania:

Thomas Roop, one of the commissioners of Mifflin County, and president of said board, makes return to the above writ of mandamus as follows:

That he, the said Thomas Roop, has never refused to recognize the binding obligation of the act of assembly of the 8th of February, 1871, "authorizing and requiring the said commissioners of Mifflin County to cause a public bridge to be erected over the Juniata River, at the borough of Newton Hamilton, in said county, and to buy the Mattawana toll-bridge, over the Juniata River, at M'Veytown, in said county; but that, on the contrary, he, the said Thomas Roop, has always been ready and willing to execute said act of assembly. That, on the 5th day of April, 1871, when the said board of commissioners adopted the resolution refusing to recognize the binding obligation of said act of assembly, he (said Thomas Roop,) voted against said resolution, and the same was *caused* by the affirmative vote of the remaining two commissioners.

THOMAS ROOP.

MIFFLIN COUNTY, *ss:*

Personally appeared before me Thomas Roop, above-named, who, being duly sworn according to law, deposes and says that the above return is correct and true.

THOMAS ROOP.

Sworn and subscribed before me, May 13, 1871.

W. H. BRATTON,
Prothonotary.

(Endorsed:) Filed May 16, 1871.

11 *Return of defendants Shehan and Wilson.*

In the supreme court of Pennsylvania, middle district.

THE COMMONWEALTH OF PENNSYLVANIA, EX relatione the Attorney General, &c., *vs.* THO'S ROOP, JAMES SHEHAN, AND HENRY S. Wilson, commissioners of Mifflin County.	Alternative mandamus, &c.

James Shehan and Henry S. Wilson, defendants, commissioners as aforesaid, for return to this writ, say that said defendants ought not, by writ of mandamus from this court, to be required and compelled to cause a good and sufficient bridge to be built, as set forth in plaintiff's complaint, at the point aforesaid, at the expense of said county; to provide the means for the purpose, and to complete said bridge on or before the first day of November next, because they say—

First. That, by the provisions of said act, the defendants, commissioners as aforesaid, are also further authorized and required, by the remaining sections of said act, to buy from the Mattawana Bridge Company, their bridge or bridges over the Juniata River, at M'Veytown, Mifflin County, to pay said company therefor any sum not exceeding eight thousand dollars, to be adjusted and ascertained as is provided in and by the second section of said act; and that in case of a failure between the parties to agree upon the price to be paid for said last-mentioned bridge, as provided by said act, then the defendants, commissioners as aforesaid, are required to build another bridge at M'Veytown, over said river, and to provide the means for the purpose, as by reference to said act hereunto annexed will appear.

Second. That, by the provisions of the second section of said act, the defendants, commissioners as aforesaid, are required, upon the report of the appraisers being filed in court, if the said Mattawana Bridge Company shall accept the *same* so fixed by said appraisers to be paid by said defendants, for said bridge, to draw their warrant upon the treasurer of the county of Mifflin in favor of the said company for such sum so as aforesaid fixed by said appraisers.

Third. That a good and sufficient public bridge at Newton Hamilton cannot be built, according to the provisions of said act, for a sum less than twenty thousand dollars; or, in case of a purchase of the bridge or bridges at M'Veytown, from said Mattawana Bridge Company, the sum to be paid cannot, as defendants are informed and believe, be less than the further sum of eight thousand dollars, making in the aggregate a debt of at least from thirty-eight thousand dollars to fifty thousand dollars, to be provided for and paid by defendants at the expense of the county, and thirty thousand dollars to be paid on or before November 1, 1871.

Fourth. That there is no money in the treasury to pay any such debt or any part thereof, nor have the defendants the means or power to place the same there for that purpose, and defendants are of the opinion and believe they ought not to be compelled to draw their warrants upon an empty treasury, and to entail a debt upon the county which it is at the present time entirely unable to pay, for the purposes of building and purchasing bridges under said act.

Fifth. That by the fourth and last section of said act the defendants, commissioners as aforesaid, are authorized to borrow money to enable them to carry into effect the provisions of said act, any sum not exceed-

ing twenty-five thousand dollars, at any rate of interest not exceeding eight per cent.; that said defendants cannot carry said act into effect without a much greater and heavier loan than twenty-five thousand dollars. and that, under the present financial embarrassments of the county, defendants cannot borrow money, nor can they negotiate their bonds at eight per cent. interest as required by said act.

Sixth. That the county of Mifflin is deeply involved in debt, to wit, in the sum of twenty-five thousand dollars, the greater part of which debt was created to raise bounties for volunteers, and that the several
12 townships in the county are also heavily involved in debts of like nature and for like purposes, and that the people of this county have been for several years last past and still are struggling, under embarrassments and financial difficulties, to pay off and discharge said debt; that it would be oppressive and grievously burdensome upon the people of this county to increase the debt upon them at the present time to the extent necessary to carry into effect the said act, even if defendants could borrow money for the purpose, or negotiate their bonds as authorized and directed by the said act, but the defendants say that they cannot provide the means during the present year to build either the one or the other of said bridges.

Seventh. That the bridge at Newton Hamilton can be of no public benefit or use, but merely to subserve the interest of a few individuals who reside upon the opposite side of the river from that village, and that defendants are of the opinion that it would be unjust and oppressive to tax the people against their wills and contrary to their desires, especially when the best interests of the public do not require it, but only to promote an entirely private enterprise by the building of such bridge.

Eighth. The defendants, for return, further say that the information made by the attorney general before this court, as contained in paragraphs Nos. 1 to 7, inclusive, is true so far as defendants know and are advised; but submit with great respect to the judgment of this court, that said act of assembly has no binding obligation or force upon them, so as to compel them to create a debt against the county for the promotion of an enterprise of a purely local and private character; that the building of the contemplated bridge at Newton Hamilton is an enterprise of such a character, and not one of any general public utility; that nine-tenths of all the taxable citizens of Mifflin County are opposed to its erection at their expense, and that the defendants being the constituted authorities and immediate representatives of the people of Mifflin County, believe it would be an act of injustice to themselves and the people they represent, to create a debt of such magnitude, for such purpose, in the present helpless condition of the treasury, and the embarrassed condition of the county.

Ninth. That defendants, showing cause against the writ of mandamus in this case, further say that there are other remedies; that this writ is only granted in the last resort when there is no other adequate remedy; that in this case it is not the proper remedy, but is by indictment in the quarter sessions of Mifflin County, and cannot be resorted to until every other specific remedy shall have been exhausted.

Tenth. That the bridge at Newton Hamilton cannot be built at all without extending the structure thereof over and upon the private property of Mrs. Wharton and others, in Wayne Township, Mifflin County; that no provision is made in said act for compensation
13 for the taking of her or their private property for such public use, and that neither she, Mrs. Wharton, or any other land owner, over whose land said bridge is authorized to be built, has granted any

right of way to defendants, by deed or otherwise, to pass over, use, or occupy any of her or their property, for the purpose of constructing and building such bridge thereupon; that the defendants have no right, as they have been advised and believe, to enter upon and take any of her or their private property for public use without compensation, nor can the legislature give to them by act of assembly any such right.

Eleventh. That said act of assembly is unconstitutional and void in this, that the legislature have no power to compel the defendants to purchase a bridge from an incorporated company; that the Mattawana Bridge Company is an incorporated company, and that their bridge is a toll-bridge.

Twelfth. That said act is unconstitutional and void in this, that by the first section of the act of 11th of March, 1850, pamphlet laws 172, it is not lawful to erect any free bridge over the Juniata River within one mile from any toll-bridge, constructed by any company incorporated by this Commonwealth.

Thirteenth. That said act is unconstitutional in this, that the defendants cannot be compelled to create a debt against the county, either by borrowing money, issuing bonds, or by levying taxes upon the people for the payment thereof, for any purpose whatever, except for an already existing debt created for the legitimate and current expenses of the county.

JAMES SHEHAN,
H. S. WILSON,
Commissioners.

MIFFLIN COUNTY, *ss:*

Personally appeared before me, W'm H. Bratton, prothonotary in and for Mifflin County, Henry S. Wilson and James Shehan, who, being duly sworn, say that the above and foregoing return is correct and true to the best of our knowledge and belief.

HENRY S. WILSON,
JAMES SHEHAN.

Sworn and subscribed before me May 23, 1871.

W. H. BRATTON,
Prothonotary.

(Endorsed:) Filed May 16, 1871.

14 *Demurrer.*

Supreme court of Pennsylvania. May Term, 1871, No. 99.

COMMONWEALTH, EX RELATIONE ATTORNEY general, *vs.* SHEHAN AND WILSON, COMMISSIONERS OF Mifflin County. } Mandamus.

And now, May 24, 1871, the return of the said defendants having been read, the Commonwealth demurs to the same, and assigns for causes of demurrer:

I. That the said return exhibits no sufficient or legal reason for dis-

obeying the aforesaid first section of the act of February 8, 1871, recited in the information.

II. That the defendants, being ministerial officers, are bound by the provisions of said act, and cannot set up any of the matters stated in their said return.

III. Because the said return is argumentative and evasive.

IV. Because the affidavit attached to said return is insufficient.

F. CARROLL BREWSTER,
Attorney General.

(Endorsed:) Filed May 24, 1871.

15 *Motion to quash.*

ATTORNEY GENERAL
vs.
SHEHAN ET AL., COMMISSIONERS OF MIFFLIN County. } Mandamus.

Defendants move to quash this writ on the following grounds:

1. The writ is against three individuals who happen to be officers of the county of Mifflin, while the act or acts which they are complained of for not performing, is a duty of the county in its corporate capacity, if it be a duty at all.

2. There is no complaint made by any party interested—no loss or injury alleged to any person or body of persons.

3. It does not appear and is not alleged that any person having interest or authority in the premises demanded the execution of the act of assembly recited in the writ.

4. The writ of mandamus does not lie at the suit of the attorney general for the enforcement of a public duty by a public officer. The Commonwealth must indict the officers for a misdemeanor.

5. The writ contains no command upon the defendants to do any definite or particular thing, and if made peremptory would leave the defendants wholly unable to understand how it should be obeyed.

6. The vague and indefinite command of the writ cannot be carried out without a violation of the constitution.

7. This is a civil proceeding without any interested plaintiff, who makes himself known; without a proper defendant, and without any subject-matter on which it can be legally founded.

(Endorsed:) Filed May 24, 1871.

16 *Petition and suggestion of Loren L. Ellsworth.*

To the honorable the judges of the supreme court of the State of Pennsylvania:

The petition and suggestion of Loren L. Ellsworth humbly sheweth:

I. That your petitioner is a citizen of the Commonwealth of Pennsylvania, and has been for many years past, and now still is a resident in and a tax-payer of the county of Mifflin, in said State.

II. That your petitioner is a lessee of land in the township of Wayne, and a freeholder in the borough of Newton Hamilton, in said county.

III. That, on the 8th day of February, 1871, there was approved a certain act of assembly, entitled "An act to authorize the commissioners of Mifflin County to cause a public bridge to be erected over the Juniata River, at the borough of Newton Hamilton, and to buy the

Mattawana toll-bridge over the Juniata River, at M'Veytown, in said county."

IV. That, by the first section of said act, it was, inter alia, provided that the commissioners of Mifflin County be, and are hereby, authorized and required to cause a good and sufficient public bridge to be erected, at the expense of said county, over the Juniata River, from a point in the borough of Newton Hamilton, at the foot of the canal bridge, to the land of Mrs. Wharton, in Wayne Township, in said county, and that the said commissioners are hereby directed to provide the means and cause such bridge to be erected as speedily as possible, so that the same shall be completed on or before the first day of November next.

V. That Thomas Roop, James Shehan, and Henry S. Wilson, the defendants, were, at the passage of said act of assembly, and still are, the commissioners of the county of Mifflin.

VI. That, on the 9th day of March, 1871, certain citizens of Mifflin County presented to said commissioners a certified copy of said act of assembly, and requested them to proceed to build said bridge.

VII. The said commissioners, at that time, took no decided action in the matter, but held the same over for future consideration.

VIII. That, subsequently, to wit, on the 5th day of April, 1871, said commissioners met at their office, in Lewistown, and adopted the following preamble and resolution in relation to said act of assembly and the building of said bridge, viz:

17 "Whereas certain citizens of Wayne Township and Newton Hamilton have this day applied to us to erect a bridge at Newton Hamilton, under the provisions of an act of assembly of 8th February, 1871, we, the commissioners, do—

"*Resolve*, That we do not recognize the binding obligation of said act of assembly, and do hereby refuse to proceed to erect said bridge."

IX. That said commissioners have refused, and do still refuse, to regard the provisions of said act of assembly and erect said bridge at Newton Hamilton.

X. That your petitioner, as a citizen, tax-payer, and freeholder in said county of Mifflin, has a direct interest in the building of said bridge, inasmuch as the same will, when constructed, furnish means of access to your petitioner and to others to cross said Juniata River, which cannot now be done, except in boats or by fording. The river, at certain seasons of the year, is impassible either by boats or at the ford.

XI. That the erection of said bridge would be a great public convenience.

XII. Your petitioner has been informed that, on the 2d day of May, 1871, the attorney general filed his suggestion in this honorable court praying for an alternative mandamus against the commissioners of said county, which writ was allowed and is now pending:

Wherefore your petitioner prays that he may be allowed to become a relator in the said suggestion and writ, with the same effect as if he had been originally joined therein.

Lorin L. Ellsworth, having been duly sworn according to law, doth depose and say that the facts set forth in the above petition are true.

LOREN L. ELLSWORTH.

Sworn to and subscribed before me May 25, 1871.

ROBT SNODGRASS,

Prothonotary Supreme Court, Middle District.

(Endorsement:) Commonwealth, ex rel., vs. Shehan and Wilson, commissioners of Mifflin County. Petition of Loren L. Ellsworth to become a relator.

On the part of the Commonwealth, I agree that the court may grant the prayer of the petition.

F. CARROLL BREWSTER,
Attorney General.

MAY 25, 1871.

Allowed by court.

JOHN M. READ.

(Endorsed:) Filed May 25, 1871.

18 In the supreme court of Penna., middle district.

COM'LTH, EX REL., &C.,
vs.
JAMES SHEHAN, HENRY S. WILSON, & THOMAS ROOP. } No. 99. May T., 1871.

And now, to wit, May 25, 1871, the defendants' counsel object to any alteration or amendments of the names of the party pl'ff upon the record, because such amendment would entitle the def'ts to a new answer and a different argument other than that already presented to the court.

ALEXANDER REED & UTTLEY,
Att'ys for Def'ts.

(Endorsed:) Filed May 25, 1871.

19 Judgment entered as follows: And now, to wit, May 26, 1871—

COMMONWEALTH OF PENNSYLVANIA
vs
ROOP & OTHERS, COMMISSIONERS OF MIFFLIN COUNTY. }

Motion to quash refused, and judgment for the Commonwealth on the demurrer, and a peremptory writ of mandamus ordered and granted.

JOHN M. READ.

20 *Writ of peremptory mandamus.*

MIDDLE DISTRICT OF PENNSYLVANIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania, to Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of the county of Mifflin, greeting:

Whereas it has been lately shown to us, before our justices of the supreme court of Pennsylvania, sitting in and for the middle district, at Harrisburg, on the part and behalf of the Commonwealth of Pennsylvania, ex relatione Loren L. Ellsworth, that, on the 8th day of February, 1871, there was approved a certain act of assembly, entitled "An act to

authorize the commissioners of Mifflin County to cause a public bridge to be erected over the Juniata River, at the borough of Newton Hamilton, and to buy the Mattawana toll-bridge over the Juniata River, at M'Veytown, in said county;" that, by the first section of said act, it was, inter alia, provided that the commissioners of Mifflin County be, and are hereby, authorized and required to cause a good and sufficient public bridge to be erected, at the expense of the said county, over the Juniata River, from a point in the borough of Newton Hamilton, at the foot of the canal bridge, to the land of Mrs. Wharton, in Wayne Township, in said county, and that the said commissioners are hereby directed to provide the means and cause such bridge to be erected as speedly as possible, so that the same shall be completed on or before the first day of November next; that the said Thomas Roop, James, Shehan, and Henry S. Wilson were, at the passage of the said act of assembly, and still are, the commissioners of Mifflin County; that, on the 9th day of March, 1871, certain citizens of Mifflin County presented to said commissioner a certified copy of the said act of assembly, and requested them to proceed to build said bridge; that said commissioners at that time took no decided action in the matter, but held the same over for future consideration; and subsequently, to wit, on the 5th day of April, 1871, said commissioners met at their office in Lewistown, and adopted the following preamble and resolution in relation to said act of assembly, and the building of said bridge, viz: Whereas, certain citizens of Wayne Township and Newton Hamilton have this day applied to us to erect a bridge at Newton Hamilton, under the provisions of an act of assembly of 8th February, 1871, we, the commissioners do *Resolve*, that we do not recognize the binding obligations of said act of assembly, and do hereby refuse to proceed to erect said bridge;" and that the said commissioners have refused and do still refuse to regard the provisions of said act of assembly and erect said bridge at Newton
21 Hamilton: We, therefore, being willing that due and speedy justice be done in this behalf, peremptorily command you the said Thomas Roop, James Shehan, and Henry S. Wilson, commissioners aforesaid, firmly enjoining that, without delay, you proceed to cause to be erected and built the said bridge at Newton Hamilton, as by the said act of assembly so as aforesaid made and provided, you are required to do, and that all and singular the matters for the speedy performance of the foreg'ing, according to the exigency of the law, you shall do and execute as hereinbefore you have been commanded.

Witness the Honorable James Thompson, LL. D., chief justice of our said supreme court at Harrisburg, the 29th day of May, in the year of our Lord one thousand eight hundred and seventy-one, and of the Commonwealth the ninety-fifth.

ROB'T SNODGRASS,
Prothonotary.

RETURNS.—Served the within writ on Henry S. Wilson and James Shehan, personally, by handing each a true and attested copy and making contents known, June 1, 1871; and on Thomas Roop, personally, by handing him a true and attested copy, and making contents known, June 2, 1871.

So answers M. JONES, *Sheriff.*

Sworn and subscribed before me, July 11, 1871.

JOS. S. WAREAM, *J. P.*

Sheriff's fees, $9 80.

22 And now here on this day, to wit, June 6, 1871, the said Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of Mifflin County aforesaid, produced to the said the supreme court of Pennsylvania here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the City of Washington, on the first Monday in December next, which writ of error is in the words and of the tenor following, to wit:

23 UNITED STATES,
Eastern District of Pennsylvania, sct:

[SEAL.] The President of the United States to the judges of the supreme court of Pennsylvania, middle district, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, between The Commonwealth of Pennsylvania, ex rel. the attorney general, plaintiff, and Thomas Roop, James Shehan, and Henry S. Wilson, defendants, in a plea of mandamus, a manifest error has intervened to the great damage of the said Thomas Roop, James Shehan, and Henry S. Wilson, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the Supreme Court of the United States sitting at Washington, D. C., on the first Monday of December next, that, the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the Honourable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this second day of June, A. D. one thousand eight hundred and seventy-one, and in the ninety-fifth year of the independence of the said United States.

W. GRIER HIBLER,
Pro. Clerk Circuit Court U. S. E. D. of Penn'a.

Allowed by—

(Indorsed:) Supreme Court U. S. Thomas Roop et al. vs. The Commonwealth of Pennsylvania, ex rel. the att'y general. Writ of error. Filed in the prothonotary's office of the supreme c't of Penn'a, for the middle district, on the 6th day of June, 1871. Rob't Snodgrass, proth'y.

24 In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with said writ of error, are hereby transmitted to the said Supreme court accordingly.

25 *Bond.*

Know all men by these presents that we, James Shehan, Henry S. Wilson, William M Flemming, and George Bates, citizens of Mifflin County, in the Commonwealth of Pennsylvania, are held and firmly bound unto The Commonwealth of Pennsylvania, in the full and just sum of five thousand dollars, to be paid to the said Commonwealth, her certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this first day of June, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas, lately, at a term of the supreme court of Pennsylvania, held at Harrisburg, in and for the middle district, in and for the said Commonwealth of Pennsylvania, in a suit depending in said court, to wit, No. 99, May term, A. D. 1871, between The Commonwealth of Pennsylvania, ex rel. the attorney general, and Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of the county of Mifflin, judgment was rendered against the said Roop, Shehan, and Wilson, commissioners as aforesaid, and plaintiffs in error, and they, the said plaintiffs in error, having obtained a writ of error from the Supreme Court of the United States, and having filed a copy thereof in the clerk's office in said court to reverse the judgment in said suit, and a citation directed to the said defendant in error citing and admonishing defendant in error to be and appear in the Supreme Court of the United States, to be holden at Washington, on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said plaintiffs in error shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

JAMES SHEHAN. [SEAL.]
HENRY S. WILSON. [SEAL.]
WM. M. FLEMING. [SEAL.]
GEO. BATES. [SEAL.]

Sealed and delivered in presence of
JOSEPH ALEXANDER.

Approved by—

JOHN M. READ,
Acting Chief Justice of the Supreme Court of Pennsylvania.
JUNE 2, 1871.

I, Samuel S. Woods, of Lewistown, Mifflin County, president judge of the twentieth judicial district of Pennsylvania, do hereby certify that the within-named obligors are personally known to me to be perfectly good and responsible for any amount not exceeding twenty thousand dollars.

SAM'L S. WOODS.

(Endorsed:) Filed in the office of the prothonotary of the supreme court of Penn'a for the middle district, at Harrisburg, June 6, 1871. Robert Snodgrass, proth'y.

26 In the supreme court of Pennsylvania, middle district.

THE COMMONWEALTH OF PENNSYLVANIA, EX REL. the attorney general, &c., *v.* THOMAS ROOP, HENRY S. WILSON, AND JAMES Shehan, commissioners of the county of Mifflin. } No. 99. May term, 1871. Mandamus, &c.

The Commonwealth of Pennsylvania to F. Carroll Brewster, esq., attorney general of the Commonwealth of Pennsylvania, Loren L. Ellsworth, relator:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania, at Harrisburg, middle district, wherein Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of the county of Mifflin, are pl't'ffs in error, and you are def'ts in error, to show cause, if any there be, why judgment rendered against the said pl't'ffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. James Thompson, chief justice of supreme court of Pennsylvania, the 2d day of June, in the year of our Lord one thousand eight hundred & seventy-one.

JOHN M. READ,
Acting Chief Justice of the Supreme Court of Pennsylvania.

On this day of , A. D. 1871, personally appeared , before me, the subscriber, and makes oath that he delivered a true copy of the within citation to

Now, 5 June, 1871, service of within citation accepted.
GEO. W. ELDER,
Att'y for Com'th & L. L. Ellsworth, Relator.

(Indorsed:) Citation. The Comm'lth of Pennsylvania, ex rel. the attorney gen'l, &c., v. Thomas Roop et al., commissioners of the county of Mifflin. Filed in prothonotary's office of the supreme c't of Penn'a for the middle district, on the 6th day of June, 1871. Rob't Snodgrass, proth'y.

27 STATE OF PENNSYLVANIA,
Dauphin County, ss:

Personally appeared before me, the subscriber, Joseph Alexander, and, being duly sworn according to law, makes oath that he served the above and within citation upon George W. Elder, esq., attorney for the Commonwealth of Pennsylvania, and upon Loren S. Elsworth, relator, upon the 5th day of June, A. D. 1871, by giving to each a copy thereof; and also upon F. Carroll Brewster, esq., attorney general of said Commonwealth, upon the 6th day of June, A. D. 1871, by delivering to him also a true copy thereof.

JOSEPH ALEXANDER.

Sworn & subscribed before me this 6th day of June, 1871.
ROB'T SNODGRASS,
Proth'y Sup. C't of Pa., Middle District.

28 MIDDLE DISTRICT OF PENNSYLVANIA, *ss:*

In testimony that the foregoing, contained on pages one to twenty-seven, inclusive, is a true, full, and complete copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the State of Pennsylvania, in the case lately depending therein, to No. 99 of the May term, 1871, middle district, wherein The Commonwealth of Pennsylvania, ex rel. the attorney general, was plaintiff, and Thomas Roop, James Shehan, and Henry S. Wilson, commissioners of Mifflin County, were defendants, I have hereunto subscribed my name and affixed the seal of the said supreme court, at Harrisburg, this twenty-fifth day of November, A. D. one thousand eight hundred and seventy-one.

[SEAL.]

ROB'T SNODGRASS,
Proth'y Sup. C't of Pa., Middle District.

(Indorsement on cover:) No. 529. Thomas Roop, James Shehan, and Henry S. Wilson, plaintiffs in error, vs. The Commonwealth of Pennsylvana, ex rel. the attorney general. Pennsylvania sup. c't, middle dist. Filed 12th December, 1871.